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Stephen Kozmeniuk

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

11 BOSKO KANTE, p/k/a BOSKO
KANTE, an individual

Plaintiff,

V.

14 DUA LIPA, an individual; STEPHEN
15 KOZMENIUK p/k/a KOZ, an
16 individual; WARNER MUSIC
17 GROUP, CORP., a Delaware
corporation; and DOES 1 through 10,
inclusive,

18 | Defendants.

CASE NO. 2:23-cv-06186-HDV (PDx)

Honorable Hernán D. Vera

DEFENDANT STEPHEN KOZMENIUK'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

1 Defendant Stephen Kozmeniuk p/k/a Koz (“Kozmeniuk”), by his
2 undersigned counsel, answers the complaint dated July 31, 2023 (the “Complaint”)
3 (Doc. No. 1) of plaintiff Bosko Kante p/k/a Bosko Kante (“Plaintiff”) as follows:

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF PARTIES

[sic]¹

6 1. Kozmeniuk lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations set forth in Paragraph 1 of the Complaint, and on
8 that basis, denies said allegations.

9 2. Kozmeniuk lacks knowledge or information sufficient to form a belief
10 as to the truth of the allegations set forth in Paragraph 2 of the Complaint, and on
11 that basis, denies said allegations.

12 3. Kozemniuk denies the allegations set forth in Paragraph 3 of the
13 Complaint, and on that basis, denies said allegations.

14 4. Kozmeniuk lacks knowledge or information sufficient to form a belief
15 as to the truth of the allegations set forth in Paragraph 4 of the Complaint, and on
16 that basis, denies said allegations.

17 5. Paragraph 5 of the Complaint asserts a legal conclusion to which no
18 response is required. To the extent a response is required, Kozmeniuk lacks
19 knowledge or information sufficient to form a belief as to the truth of the
20 allegations set forth in Paragraph 5 of the Complaint, and on that basis, denies said
21 allegations.

22 6. Paragraph 6 of the Complaint asserts a legal conclusion to which no
23 response is required. To the extent a response is required, Kozmeniuk lacks
24 knowledge or information sufficient to form a belief as to the truth of the
25 allegations set forth in Paragraph 6 of the Complaint, and on that basis, denies said
26 allegations.

¹ The headings used in the Complaint are included herein for ease of reference only. To the extent such headings constitute allegations to which a response is required, such allegations are denied.

1 7. Kozmeniuk lacks knowledge or information sufficient to form a belief
2 as to the truth of the allegations set forth in Paragraph 7 of the Complaint, and on
3 that basis, denies said allegations.

4 8. Paragraph 8 of the Complaint asserts a legal conclusion to which no
5 response is required. To the extent a response is required, Kozmeniuk denies said
6 allegations.

JURISDICTION AND VENUE

8 9. Paragraph 9 of the Complaint asserts a legal conclusion to which no
9 response is required. To the extent a response is required, Kozmeniuk denies said
10 allegations.

11 10. Paragraph 10 of the Complaint asserts a legal conclusion to which no
12 response is required. To the extent a response is required, Kozmeniuk denies said
13 allegations.

14 11. Paragraph 11 of the Complaint asserts a legal conclusion to which no
15 response is required. To the extent a response is required, Kozmeniuk denies said
16 allegations.

FACTUAL ALLEGATIONS

18 12. Kozmeniuk lacks knowledge or information sufficient to form a belief
19 as to the truth of the allegations set forth in Paragraph 12 of the Complaint, and on
20 that basis, denies said allegations.

21 13. Kozmeniuk lacks knowledge or information sufficient to form a belief
22 as to the truth of the allegations set forth in Paragraph 13 of the Complaint, and on
23 that basis, denies said allegations.

24 14. Kozmeniuk lacks knowledge or information sufficient to form a belief
25 as to the truth of the allegations set forth in Paragraph 14 of the Complaint, and on
26 that basis, denies said allegations.

27 15. Kozmeniuk admits that he contacted Plaintiff in 2019 regarding
28 potentially contributing material to be considered for possible use in connecti

1 with a musical recording titled “Levitating,” states that the communications
2 between Kozmeniuk and Plaintiff speak for themselves, and otherwise denies the
3 allegations set forth in Paragraph 15 of the Complaint.

4 16. Kozmeniuk lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations set forth in Paragraph 16 of the Complaint, and on
6 that basis, denies said allegations.

7 17. Kozmeniuk denies the allegations set forth in Paragraph 17 of the
8 Complaint.

9 18. Kozmeniuk denies the allegations set forth in Paragraph 18 of the
10 Complaint.

11 19. Kozmeniuk admits that Plaintiff agreed that Plaintiff’s purported
12 contributions could be used in connection with the musical recording titled
13 “Levitating,” and otherwise denies the allegations set forth in Paragraph 19 of the
14 Complaint.

15 20. Kozmeniuk lacks knowledge or information sufficient to form a belief
16 as to the truth of the allegations set forth in Paragraph 20 of the Complaint, and on
17 that basis, denies said allegations.

18 21. Kozmeniuk denies the allegations set forth in Paragraph 21 of the
19 Complaint.

20 22. Kozmeniuk lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations set forth in Paragraph 22 of the Complaint, and on
22 that basis, denies said allegations.

23 23. Kozmeniuk denies the allegations set forth in Paragraph 23 of the
24 Complaint.

25 24. Kozmeniuk lacks knowledge or information sufficient to form a belief
26 as to the truth of the allegations set forth in Paragraph 24 of the Complaint, and on
27 that basis, denies said allegations.

1 25. Kozmeniuk lacks knowledge or information sufficient to form a belief
2 as to the truth of the allegations set forth in Paragraph 25 of the Complaint, and on
3 that basis, denies said allegations.

4 26. Kozmeniuk lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations set forth in Paragraph 26 of the Complaint, and on
6 that basis, denies said allegations.

7 27. Kozmeniuk lacks knowledge or information sufficient to form a belief
8 as to the truth of the allegations set forth in Paragraph 27 of the Complaint, and on
9 that basis, denies said allegations.

10 28. Kozmeniuk lacks knowledge or information sufficient to form a belief
11 as to the truth of the allegations set forth in Paragraph 28 of the Complaint, and on
12 that basis, denies said allegations.

13 29. Kozmeniuk lacks knowledge or information sufficient to form a belief
14 as to the truth of the allegations set forth in Paragraph 29 of the Complaint, and on
15 that basis, denies said allegations.

16 30. Kozmeniuk lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations set forth in Paragraph 30 of the Complaint, and on
18 that basis, denies said allegations.

19 31. Kozmeniuk lacks knowledge or information sufficient to form a belief
20 as to the truth of the allegations set forth in Paragraph 31 of the Complaint, and on
21 that basis, denies said allegations.

22 32. Kozmeniuk denies the allegations set forth in Paragraph 32 of the
23 Complaint.

24 33. Kozmeniuk denies the allegations set forth in Paragraph 33 of the
25 Complaint.

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FIRST CLAIM FOR RELIEF

(For Copyright Infringement of Composition – Against All Defendants)

3 34. Kozmeniuk adopts and incorporates by reference herein its responses
4 to the allegations set forth in Paragraphs 1 through 33 of the Complaint.

5 35. Paragraph 35 of the Complaint asserts a legal conclusion to which no
6 response is required. To the extent a response is required, Kozmeniuk lacks
7 knowledge or information sufficient to form a belief as to the truth of the
8 allegations set forth in Paragraph 35 of the Complaint, and on that basis, denies
9 said allegations. Kozmeniuk further avers that the contents of Exhibit A to the
10 Complaint speak for themselves, and that Kozmeniuk otherwise lacks knowledge
11 or information sufficient to form a belief as to the truth of the contents of Exhibit A
12 to the Complaint, and on that basis, denies any allegations arising therefrom.

13 36. Paragraph 36 of the Complaint asserts a legal conclusion to which no
14 response is required. To the extent a response is required, Kozmeniuk lacks
15 knowledge or information sufficient to form a belief as to the truth of the
16 allegations set forth in Paragraph 36 of the Complaint, and on that basis, denies
17 said allegations. Kozmeniuk further avers that the contents of Exhibit B to the
18 Complaint speak for themselves, and that Kozmeniuk otherwise lacks knowledge
19 or information sufficient to form a belief as to the truth of the contents of Exhibit B
20 to the Complaint, and on that basis, denies any allegations arising therefrom.

21 37. Kozmeniuk denies the allegations set forth in Paragraph 37 of the
22 Complaint.

23 38. Kozmeniuk denies the allegations set forth in Paragraph 38 of the
24 Complaint.

25 39. Paragraph 39 of the Complaint asserts a legal conclusion to which no
26 response is required. To the extent a response is required, Kozmeniuk denies said
27 allegations.

1 40. Paragraph 40 of the Complaint asserts a legal conclusion to which no
2 response is required. To the extent a response is required, Kozmeniuk denies said
3 allegations.

4 41. Paragraph 41 of the Complaint asserts a legal conclusion to which no
5 response is required. To the extent a response is required, Kozmeniuk denies said
6 allegations.

7 42. Paragraph 42 of the Complaint asserts a legal conclusion to which no
8 response is required. To the extent a response is required, Kozmeniuk denies said
9 allegations.

10 43. Paragraph 43 of the Complaint asserts a legal conclusion to which no
11 response is required. To the extent a response is required, Kozmeniuk denies said
12 allegations.

13 44. Paragraph 44 of the Complaint asserts a legal conclusion to which no
14 response is required. To the extent a response is required, Kozmeniuk denies said
15 allegations.

SECOND CLAIM FOR RELIEF

17 | (For Breach of Oral Contract Against All Defendants)

18 45. Kozmeniuk adopts and incorporates by reference herein its responses
19 to the allegations set forth in Paragraphs 1 through 33 of the Complaint.

20 | 46. Kozmeniuk denies the allegations of Paragraph 46 of the Complaint.

21 | 47. Kozmeniuk denies the allegations of Paragraph 47 of the Complaint.

22 48. Kozmeniuk lacks knowledge or information sufficient to form a belief
23 as to the truth of the allegations set forth in Paragraph 48 of the Complaint, and on
24 that basis, denies said allegations.

25 49. Kozmeniuk denies the allegations set forth in Paragraph 49 of the
26 Complaint.

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1 50. Paragraph 50 of the Complaint asserts a legal conclusion to which no
2 response is required. To the extent a response is required, Kozmeniuk denies said
3 allegations.

4 51. Paragraph 51 of the Complaint asserts a legal conclusion to which no
5 response is required. To the extent a response is required, Kozmeniuk denies said
6 allegations.

THIRD CLAIM FOR RELIEF

(For Declaratory Relief – Against All Defendants)

9 52. Kozmeniuk adopts and incorporates by reference herein its responses
10 to the allegations set forth in Paragraphs 1 through 33 and Paragraphs 46 through
11 50 of the Complaint.

12 53. Paragraph 53 of the Complaint asserts a legal conclusion to which no
13 response is required. To the extent a response is required, Kozmeniuk denies said
14 allegations.

15 54. Paragraph 54 of the Complaint asserts a legal conclusion to which no
16 response is required. To the extent a response is required, Kozmeniuk denies said
17 allegations.

FOURTH CLAIM FOR RELIEF

19 | (For Temporary, Preliminary, and Permanent Injunction – Against All Defendants)

20 55. Kozmeniuk adopts and incorporates by reference herein its responses
21 to the allegations set forth in Paragraphs 1 through 33 of the Complaint.

22 56. Paragraph 56 of the Complaint asserts a legal conclusion to which no
23 response is required. To the extent a response is required, Kozmeniuk denies said
24 allegations.

25 57. Paragraph 57 of the Complaint asserts a legal conclusion to which no
26 response is required. To the extent a response is required, Kozmeniuk denies said
27 allegations.

1 58. Paragraph 58 of the Complaint asserts a legal conclusion to which no
2 response is required. To the extent a response is required, Kozmeniuk denies said
3 allegations.

PRAYER FOR RELIEF

5 Kozmeniuk denies that Plaintiff is entitled to the relief requested in the
6 Complaint or to any other relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

Without waiving or excusing Plaintiff's burden of proof, or admitting that Kozmeniuk has any burden of proof, Kozmeniuk asserts the following affirmative and other defenses. Kozmeniuk does not presently know all of the facts and circumstances with respect to Plaintiff's allegations, and thereby reserves the right to amend this answer should it later discover facts demonstrating the existence of additional defenses.

FIRST DEFENSE

(Insufficient Service of Process)

17 The Complaint should be dismissed as against Kozmeniuk based on
18 improper service of process.

SECOND DEFENSE

(Lack of Personal Jurisdiction)

21 The Complaint should be dismissed as against Kozmeniuk because this
22 Court lacks personal jurisdiction over Kozmeniuk.

THIRD DEFENSE

(Improper Venue)

25 | This action should be dismissed as being filed in the improper venue.

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FOURTH DEFENSE

(Failure to State a Claim)

The Complaint and any purported claims for relief therein fail to state a claim upon which relief can be granted.

FIFTH DEFENSE

(Lack of Volitional Conduct)

Plaintiff's copyright infringement claim is barred for failure to show volitional conduct by Kozmeniuk that would implicate any rights under 17 U.S.C. § 106.

SIXTH DEFENSE

(Good Faith/Innocent Infringement)

The Complaint and any purported claims for relief therein are barred in whole or in part because, to the extent it acted at all, Kozmeniuk acted in good faith and had no reason to believe that any alleged acts constituted infringement. To the extent Plaintiff's claims are not entirely barred by Kozmeniuk's good faith, any damages, which Kozmeniuk expressly denies, are limited by Kozmeniuk's innocent intent.

SEVENTH DEFENSE

(Lack of Originality/Protectability)

The material that Plaintiff alleges has been infringed, and each element thereof, is not original and/or does not constitute protectable and copyrightable subject matter.

EIGHTH DEFENSE

(Lack of Registration)

The Complaint and any purported claims for relief therein are barred to the extent they are based on the alleged infringement of material that is not subject to a valid and enforceable copyright registration.

NINTH DEFENSE

(Fraud on the Copyright Office)

3 The Complaint and any purported claims for relief therein are barred to the
4 extent that Plaintiff knowingly included material inaccuracies on the application
5 for the relevant copyright registrations, such that the registrations are invalid
6 pursuant to 17 U.S.C. § 411(b).

TENTH DEFENSE

(Copyright Misuse)

9 The Complaint and any purported claims for relief therein are barred, in
10 whole or in part, by the doctrine of copyright misuse.

ELEVENTH DEFENSE

(Failure to Timely Register)

13 Plaintiff's claims for statutory damages and/or attorneys' fees are barred by
14 17 U.S.C. § 412 for failure to timely register the claimed works.

TWELFTH DEFENSE

(Waiver)

17 The Complaint and any claims therein are barred, precluded, and/or limited
18 by the doctrine of waiver.

THIRTEENTH DEFENSE

(Estoppel)

21 The Complaint and any claims therein are barred, precluded, and/or limited
22 by the doctrine of estoppel.

FOURTEENTH DEFENSE

(Acquiescence/Consent)

25 The Complaint and any claims therein are barred, precluded, and/or limited
26 by the doctrines of acquiescence and consent.

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FIFTEENTH DEFENSE

(License)

The Complaint and any claims therein are barred, precluded, and/or limited by the doctrines of express and/or implied license.

SIXTEENTH DEFENSE

(Fair Use)

The Complaint and any purported claims for relief therein are barred, precluded, and/or limited to the extent any alleged use of Plaintiff's allegedly copyrightable material constitutes fair use.

SEVENTEENTH DEFENSE

(De Minimis Use)

The Complaint and any purported claims for relief therein are barred, precluded, and/or limited to the extent the alleged use of any of the material at issue constitutes *de minimis* use.

EIGHTEENTH DEFENSE

(Failure to Mitigate)

Plaintiff did not incur any damages. To the extent Plaintiff did incur any damages, which Kozmeniuk expressly denies, Plaintiff failed to mitigate his damages.

NINETEENTH DEFENSE

(Unclean Hands)

Plaintiff has not come to the Court with clean hands, and thus, the Complaint and any purported claims for relief therein are barred, in whole or in part, by the doctrine of unclean hands.

TWENTIETH DEFENSE

(Adequate Remedy at Law)

Plaintiff's requests for injunctive relief are barred because Plaintiff has an adequate remedy at law.

TWENTY-FIRST DEFENSE

(Laches)

Plaintiff's requests for injunctive relief are barred by the doctrine of laches.

TWENTY-SECOND DEFENSE

(Statute of Limitations)

The Complaint and any purported claims for relief therein are barred, precluded, and/or limited by the applicable statute of limitations.

TWENTY-THIRD DEFENSE

(Lack of Subject Matter Jurisdiction)

10 The Complaint and any purported claims for relief therein fail because
11 Plaintiff does not allege any case or controversy.

13 Kozmeniuk reserves the right to assert any other such affirmative defenses in
14 the event that further investigation and discovery indicates that they are proper.

16 WHEREFORE, Kozmeniuk respectfully submits that the Complaint should
17 be dismissed with prejudice and judgment entered in its favor, and that Kozmeniuk
18 be awarded its reasonable attorneys' fees and costs incurred in the defense of this
19 action pursuant to 17 U.S.C. § 505.

21 | DATED: October 23, 2023

Mitchell Silberberg & Knupp LLP

By: /s/ David A. Steinberg

David A. Steinberg

Bradley J. Mullins

Attorneys for Defendant Warner Music Group Corp. and Stephen Kozmeniuk

DEMAND FOR JURY TRIAL

Kozmeniuk demands a trial by jury of all of Plaintiff's claims that are triable.

DATED: October 23, 2023 MITCHELL SILBERBERG & KNUPP LLP

By: /s/ David A. Steinberg
David A. Steinberg
Bradley J. Mullins
Attorneys for Defendant Warner Music
Group Corp. and Stephen Kozmeniuk